

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	:	
	:	Chapter 11
	:	
ETOYS, INC., et al. <sup>1</sup> ,	:	Case Nos. 01-0706 (RB)
	:	Through 01-0709 (RB)
Debtors.	:	
	:	
	X	
ROBERT K. ALBER, <i>Pro Se</i> ,	:	
	:	
Appellant,	:	Civil Action No. 05-_____
	:	
v.	:	
	:	
TRAUB, BONACQUIST & FOX LLP,	:	
BARRY GOLD, MORRIS NICHOLS	:	
ARSHT & TUNNEL LLP, AND POST-	:	[Related to Docket No. 2332]
EFFECTIVE DATE COMMITTEE OF	:	
EBC I, INC.,	:	
	:	
Appellees.	:	
	X	

**APPELLEE’S COUNTER-DESIGNATION  
OF THE RECORD TO BE INCLUDED IN APPEAL  
BY ROBERT K. ALBER, PRO SE APPELLANT, AND  
COUNTER-STATEMENT OF THE ISSUES ON APPEAL**

Appellee Traub, Bonacquist & Fox LLP (TB&F” or “Appellee”), pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), hereby submits (i) the following items to be included in the Record on Appeal herein, in addition to those items designated by Appellant, Robert K. Alber, *Pro Se*, and (ii)

<sup>1</sup> The Debtors are the following entities: EBC I, Inc. f/k/a eToys, Inc. (“eToys”), EBC Distribution, LLC, f/k/a eToys Distribution LLC, PMJ Corporation and eKids, Inc.

Appellee's Counter-Statement of the Issues on Appeal<sup>2</sup>, in connection with Appellant's appeal of the October 4, 2005 Order (the "October 4 Order") of the United States Bankruptcy Court, District of Delaware (Walrath, C.J. presiding) (the "Court"), *inter alia*, (i) denying in part and granting in part the emergency motion filed by Alber (the "Emergency Motion"), (ii) approving settlement agreement between TB&F and the Office of the United States Trustee ("UST Settlement Motion"), and (iii) approving settlement between the PEDC and Goldman Sachs & Co., Inc., for and upon the reasons set forth in its Opinion, dated October 4, 2005.

**COUNTER-DESIGNATION OF RECORD ON APPEAL**

<b>Tab No.</b>	<b>Date Filed</b>	<b>Docket No.</b>	<b>Description of Pleading</b>
1.	11/24/04	2128	Motion for Order Approving Settlement With Goldman, Sachs & Co.
2.	12/14/2004	2141	Objection by Collateral Logistics, Inc. to PEDC Motion to Settle With Goldman Sachs & Co. and Request for Court Action of Sanctions and Removal per Rule Due to Failure to Disclose and Possible Fraud.
3.	12/15/2004	2138	Objection by Robert K. Alber to the Proposed Goldman Sachs & Co. Settlement.
4.	12/15/2004	2139	Certification of No Objection of PEDC to Motion for Order Approving Settlement with Goldman Sachs & Co. (WITHDRAWN)

<sup>2</sup> In its Designation of the Record on Appeal, Appellant has failed to identify documents by their correct titles or by official docket numbers. As a result, Appellee is unable to determine precisely what documents Appellant is referring to in its Designation of the Record. Accordingly, in this Counter-Designation, Appellee herein designates all those items that it believes should be included in the Record on Appeal. In doing so, Appellee has included within the designated record all pleadings filed by Appellant that were not otherwise stricken by the Bankruptcy Court. In addition, Appellant has designated numerous items that were not part of the record below, and are inappropriate for inclusion in the Record on Appeal. Consequently, Appellee reserves the right to seek an order striking certain items from Appellant's designation.

<b>Tab No.</b>	<b>Date Filed</b>	<b>Docket No.</b>	<b>Description of Pleading</b>
5.	12/15/2004	2143	Notice of Withdrawal filed by PEDC to Certification of No Objection of PEDC Motion for Order Approving Settlement with Goldman Sachs & Co.
6.	12/20/2004	2145	(Emergency) Motion filed by Robert K. Alber to Allow an Official Investigation, Request that Sanctions, Disgorgement of Fees and Immediate Removal of Barry Gold, Paul Traub, Michael Fox and Traub, Bonacquist & Fox LLP, Among Others be Effected Immediately
7.	12/22/2004	2146	(Emergency) Motion of Collateral Logistics, Inc. to Allow Facts in Evidence, to Disqualify Traub, Bonacquist & Fox as Council for Creditors Committee and Request to Remove Barry Gold
8.	1/4/05	2152	Transcript of Hearing Held on December 22, 2004 Before the Honorable Mary F. Walrath
9.	1/25/2005	2169	Barry Gold's Response to Emergency Motions filed by Robert K. Alber and COLLATERAL LOGISTICS, INC.
10.	1/25/2005	2170	PEDC's Response in Opposition to Emergency Motions filed by COLLATERAL LOGISTICS, INC. and Robert K. Alber
11.	1/25/2005	2171	Objection by Traub, Bonacquist & Fox LLP to Motions Seeking, <i>Inter Alia</i> , Sanctions, Disgorgement of Fees, and Immediate Removal of Traub, Bonacquist & Fox LLP filed by Robert K. Alber and Collateral Logistics, Inc.

<b>Tab No.</b>	<b>Date Filed</b>	<b>Docket No.</b>	<b>Description of Pleading</b>
12.	1/25/2005	2173	Omnibus Response and Objection of EBC I, Inc., f/k/a eToys, Inc. Reorganized Debtor, to: (I) Objection of Robert K. Alber, on Behalf of Himself and Purported eToys Shareholders Group, to Motion for Order Approving Settlement with Goldman, Sachs & Co.; (II) Objection by Collateral Logistics, Inc. to PEDC Motion to Settle with Goldman Sachs and Request for Court Action of Sanctions and Removal all per Rule Due to Failure to Disclose and Possible Fraud; (III) Motion of Robert K. Alber, on Behalf of Himself and Purported eToys Shareholders Group, for Various Relief; and (IV) Motion of Collateral Logistics, Inc. for Various Relief
13.	1/25/2005	2178	Motion of Robert K. Alber to Allow an Official Investigation by Initiated by the Court, the US Trustee Office, and/or the SEC into Violations of Code (a) and Rule 2014, and others, and Request that Sanctions, Disgorgement of Fees and the Immediate Removal of Debtors Counsel as Represented by Robert Dehney, Michael Busenkell, Gregory Werkheiser and Morris, Nichols, Arsht & Tunnell (MNAT), Among Others, be Effected Immediately
14.	2/8/05	2191	Transcript of Hearing Held on February 1, 2005 Before the Honorable Mary F. Walrath
15.	2/9/2005	2189	Scheduling Order (w/Revisions) re: Motions and MNAT Disqualification Motion
16.	2/11/2005	2193	Objection of Morris, Nichols, Arsht & Tunnell to Motion of Robert K. Alber for Disqualification of Morris, Nichols, Arsht & Tunnell as Counsel to Reorganized Debtor, Disgorgement of Compensation and Other Relief
17.	2/11/2005	2194	Response to and Reaffirmation of Emergency Requests Concerning Criminal and Civil Acts by Multiple Parties in the eToys Collective Cases, filed by Collateral Logistics, Inc.

<b>Tab No.</b>	<b>Date Filed</b>	<b>Docket No.</b>	<b>Description of Pleading</b>
18.	2/15/2005	2195	United States Trustee's Motion for Entry of an Order Directing Disgorgement of Fees to be Paid to Traub, Bonacquist & Fox (TBF) for Services Rendered as Counsel to the Official Committee of Unsecured Creditors
19.	2/24/2005	2201	United States Trustee's Motion to Approve Settlement of Motion for Order Directing Disgorgement of Fees Paid to Traub Bonacquist & Fox LLP for Services Rendered as Counsel to Official Committee of Unsecured Creditors
20.	2/24/2005	2202	United States Trustee's Motion to Shorten Time, to Limit Notice and to Approve Form and Manner of Notice in Connection with Motion to Approve Settlement of Motion for Order Directing Disgorgement of Fees Paid to Traub Bonacquist & Fox LLP for Services Rendered as Counsel to Official Committee of Unsecured Creditors
21.	2/25/2005	2205	Emergency Motion by Traub, Bonacquist & Fox LLP to Continue Evidentiary Hearings
22.	2/28/2005	2210	Order (with Revisions by the Court) Granting Traub, Bonacquist & Fox LLP's Emergency Motion to Continue Evidentiary Hearings
23.	3/1/2005	2212	Limited Joinder and Response of Collateral Logistics, Inc. and Steve Haas to the US Trustee's Motion for Disgorgement and Earlier Statements of Disqualification of the Firm Traub, Bonacquist & Fox Along with Replacement of Barry Gold as Plan Administrator and Disqualification and Disgorgement of the Firm of Morris, Nichols Arsht & Tunnell
24.	3/1/2005	2213	Hearing held on 3/1/2005 – Sign In Sheet

<b>Tab No.</b>	<b>Date Filed</b>	<b>Docket No.</b>	<b>Description of Pleading</b>
25.	3/1/2005	2214	Response Of Steve Haas President Of Collateral Logistics, Inc. To Barry Gold's Response On January 25 <sup>th</sup> 2005 To The Motion Of Steve Haas And Collateral Logistics And The Separate Motion Of Robert K. Alber An eToys Shareholder Which Requested Emergency Actions Of The Court In The eToys Matter Due To Fraud And Failure To Disclose Along With Other Actions On December 22 <sup>nd</sup> 2004 Including Sanctions Of Disqualification Disgorgement And The Appointment Of An Examiner Or Other Measures That The Court Deem Appropriate Under The Code To Correct Matters
26.	3/1/2005	2215	Response Of Steve Haas President Of Collateral Logistics, Inc. Morris Nichols Arsht & Tunnel On January 25th 2005 Along With Their Relative Response In Feb. To The Motion Of Steve Haas And Collateral Logistics And The Separate Motion Of Robert K. Alber An eToys Shareholder Which Requested Emergency Actions Of The Court In The eToys Matter Due To Fraud And Failure To Disclose Along With Other Actions On December 22, 2004 Including Sanctions Of Disqualification Disgorgement And The Appointment Of An Examiner Or Other Measures That The Court Deem Appropriate Specifically To Assure Good Faith Compliance To The Plan By Debtor Under The Code To Correct Matters Of Fraud On Disclosure
27.	3/1/2005	2216	Response Of Steve Haas President Of Collateral Logistics, Inc. To The Offer To Compromise And/Or Settle The Traub Bonacquist & Fox Along With Barry Gold And Other Related Matters With Broad Indemnification Language Presented That Is Hereby Objected To As Being Far To Lenient
28.	3/1/2005	2217	Affidavit of Collateral Logistics, Inc. that Collateral Logistics, Inc. is Pro Se
29.	3/5/2005	2220	Supplemental Response of Morris, Nichols, Arsht & Tunnell to Motion of Robert K. Alber for Disqualification of Morris, Nichols, Arsht & Tunnell as Counsel to Reorganized Debtor, Disgorgement of Compensation and Other Relief

<b>Tab No.</b>	<b>Date Filed</b>	<b>Docket No.</b>	<b>Description of Pleading</b>
30.	3/9/2005	2221	Joinder of Robert K. Alber Inter Alia the US Trustee's Motion for Entry of an Order Directing Disgorgement of Fees Paid to the Traub, Bonacquist & Fox LLP et al for Services Rendered as Counsel to Official Committee of Unsecured Creditors with this week Response to the Hearing of March 1, 2005 and the New Evidence Issues
31	3/9/2005	2222	Supplemental Statement of Robert K. Alber, eToys Shareholder, Requesting the Court Impose Harsher Sanctions on Traub, Bonacquist & Fox LLP and Disqualify Barry Gold as Plan Administrator (on behalf of Robert K. Alber as well as other ETYSQ shareholders of record)
32.	3/11/2005	2223	Certificate of Service of Robert K. Alber to Joinder Inter Alia re: the US Trustee's Motion for Disgorgement of Fees Paid to Traub, Bonacquist & Fox LLP
33.	3/11/2005	2224	Certificate of Service of Robert K. Alber to Supplemental Statement Requesting the Court Impose Harsher Sanctions on Traub, Bonacquist & Fox LLP and Disqualify Barry Gold as Plan Administrator
34.	3/15/2005	2225	United States Trustee's Reply to Pleadings Styled as (A) Robert K. Alber Joining Inter Alia the United States Trustee's Motion for Order Directing Disgorgement of Fees Paid to Traub, Bonacquist & Fox LLP et al for Services Rendered as Counsel to Official Committee of Unsecured Creditors with This One Week Response to the Hearing of March 1, 2005 and the New Evidence Issues (D.I. 2221) and (B) Supplemental Statement by Robert K. Alber, eToys Shareholder, Requesting the Court Impose Harsher Sanctions on Traub, Bonacquist & Fox LLP and Disqualify Barry Gold as Plan Administrator (D.I. 2222)

<b>Tab No.</b>	<b>Date Filed</b>	<b>Docket No.</b>	<b>Description of Pleading</b>
35.	3/15/2005	2226	Response by Traub, Bonacquist & Fox LLP (A) in Support of US Trustee's Motion Seeking Approval of a Settlement with Traub, Bonacquist & Fox LLP and (B) in Opposition to (i) Supplemental Statement and Joinder in US Trustee Sanctions Motion Filed by Robert K. Alber, (ii) Limited Joinder and Response of Collateral Logistics, Inc. and Steve Haas to the US Trustee's Motion for Disgorgement and (iii) Response of Steve Haas President of Collateral Logistics, Inc. to the US Trustee's Offer to Compromise and/or Settle with Traub, Bonacquist & Fox LLP (Dockets Nos. 2145, 2146, 2201, 2202, 2211, 2216, 2221 and 2222 respectively)
36.	3/15/2005	2227	Barry Gold's Response to Robert K. Alber's Joining of United States Trustee's Motion for Disgorgement (Docket No. 2221) and Supplement Statement (Docket No. 2222)
37.	3/15/2005	2228	Transcript from Hearing held on March 1, 2005
38.	3/15/2005	2229	Response of EBCI, Inc. f/k/a eToys, Inc. Reorganized Debtor, to Supplemental Statement of Robert K. Alber
39.	3/15/2005	2231	Response by Robert K. Alber to Supplemental Response of MNAT, eToys Debtors Counsel, eToys Docket 2220, which is a Response to eToys Docket 2178, Requesting Disqualification of MNAT, Disgorgement of Compensation Paid to MNAT for Services Rendered, Sanctions, and Other Relief, for Not Disclosing the Fact that they, MNAT, Had Not Disclosed their Relationship with Goldman Sachs (GS) and General Electric (GECC)
40.	3/17/2005	2232	Second Supplemental Response of Morris, Nichols, Arsht & Tunnell to Motion of Robert K. Alber for Disqualification of Morris, Nichols, Arsht & Tunnell as Counsel to Reorganized Debtor, Disgorgement of Compensation and Other Relief



<b>Tab No.</b>	<b>Date Filed</b>	<b>Docket No.</b>	<b>Description of Pleading</b>
41.	10/4/2005	2319	Opinion DENYING Motion of Collateral Logistics, Inc.; GRANTING IN PART and DENYING IN PART Motions of Robert K. Alber; APPROVING Settlement Between U.S. Trustee and Traub, Bonacquist, Fox LLP; APPROVING Settlement with Goldman Sachs & Co.
42.	10/4/2005	2320	Order DENYING Motion of Collateral Logistics, Inc.; GRANTING IN PART and DENYING IN PART Motions of Robert K. Alber; APPROVING Settlement between U.S. Trustee and Traub, Bonacquist, Fox LLP; APPROVING Settlement with Goldman Sachs & Co.
43.	10/4/2005	2321	Certificate of Service filed by Barry Gold, as Plan Administrator for the Substantively Consolidated Chapter 11 Estates of EBCI, Inc. f/k/a eToys, Inc. et al, for the Court's October 4, 2005 Opinion and October 4, 2005 Order
44.	10/14/2005	2326	Notice of Appeal Of The Court's Decision Entered On October 4, 2005. Appeal Number 05-70, filed by Steven Haas, President of Collateral Logistics, Inc.
45.	10/14/2005	2327	Notice of Appeal Of The Court's Decision Entered On October 4, 2005, filed by Robert K. Alber.
46.	11/24/05	2329	Notice of Conditional Cross-Appeal
47.			Transcript of Deposition of Paul Traub of February 9, 2005
48.			Transcript of Deposition of Michael S. Fox of February 9, 2005
49.			Transcript of Deposition of Barry Gold of February 9, 2005
50.			Transcript of Deposition of Michael Busenkell of February 9, 2005

<b>Tab No.</b>	<b>Date Filed</b>	<b>Docket No.</b>	<b>Description of Pleading</b>
			<b>Traub, Bonacquist &amp; Fox Exhibits</b>
51.		*	Two Page Documents.
52.		*	A1- Deposition of Paul Traub
53.		*	A2- Home Life Document
54.		*	A3- Billing Statements
55.		*	A4- New York Court Documents
56.		*	A6- Secretary of State Document
57.		*	T1- Paul Traub Declaration
58.		*	T2- Michael Fox Declaration
59.		*	G1- Barry Gold Declaration
60.		*	G2- Plan Administrator Agreement
			<b>Morris Nichols Arsht &amp; Tunnell Exhibits</b>
61.		*	A1- Docket 868
62.		*	A2- Docket 873
63.		*	A3- Compilation
64.		*	A4- Transcript of December 6, 2001
65.		*	A5- Transcript of November 19, 2001
66.		*	A6- Billing Excerpts
67.		*	A7- Transcript of November 1, 2002
68.		*	A8- TB&F Billing Statements
69.		*	MNAT's Objection and Attachments

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\* March 1, 2005 Hearing Exhibit.

In accordance with Bankruptcy Rule 8006 and Local Rule 8006.1, Appellee has provided copies of the items designated herein to the Clerk of the Bankruptcy Court.

**COUNTER-STATEMENT OF ISSUES ON APPEAL**<sup>3</sup>

1. Whether the Bankruptcy Court's Opinion and October 4 Order, which denied the Alber Emergency Motion [Docket No. 2145] in full as relates to TB&F, Barry Gold and the United States Trustee, and granted the Alber Emergency Motion in part as relates to MNAT, were clearly erroneous?

2. Whether the Bankruptcy Court was correct in determining that the UST Settlement Motion should have been approved under Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019(a) as being within the range of reasonableness?

WHEREFORE, Appellee respectfully requests that the Clerk of the Bankruptcy Court transmit this Counter-Designation and the Record on Appeal to the Clerk of the United States District Court, District of Delaware.

Dated: November 3, 2005

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-and-

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<sup>3</sup> Appellant has sought to identify numerous issues on appeal. Appellee submits that most of the issues raised by appellant are not relevant to and should not be heard as part of this appeal. Appellee reserves all rights as to the scope of the issues to be heard on this appeal.

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